# INFORMATION LETTER

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## Business and Defense Services Administration Established

Establishment of the Business and Defense Services Administration as a primary organization unit of the U. S. Department of Commerce was announced October 1 by Secretary Weeks.

The new agency continues the residual defense and mobilization functions of the former National Production Authority, consolidates five current departmental offices, and establishes 25 industry divisions, staffed by business experts from government and industry.

The BDSA is under the Assistant Secretary of Commerce for Domestic Affairs. Administrator of the BDSA is Charles F. Honeywell, business executive of California and Hawaii. Deputy Administrator is H. B. McCoy, veteran career official of the Commerce Department.

The three Assistant Administrators are Samuel N. Comly of Port Chester, N. Y., Leonard E. Pasek of Neenah, Wis., and H. J. Wallace of Pittsburgh. Assistant Deputy Administrator is William E. Haines of Millville, N. J.

There will be three staff offices—the Office of Technical Services, Office of Small Business, and Office of Distribution—and 25 industry divisions. Among these will be a Containers and Packaging Division and a Food Industries Division.

## Nickel Decontrol

With the revocation of M-80, all controls on nickel will be ended November 1. Government authorization no longer is needed to purchase nickel and nickel-bearing stainless steel from suppliers.

The government made a finding that the requirements of national defense for nickel and nickel products can be met without creating a significant dislocation of the normal distribution of these products in the civilian market, and that no appreciable hardship results from meeting the defense requirements.

## Review of Factory Inspection Authority

The N.C.A. continues to receive inquiries from canners concerning the provisions of the new factory inspection amendment and its effect on the Food and Drug Administration's factory inspection procedures and authority. Consequently, in this issue there is published a summary analysis that may be useful in clarifying for Association members the present content of the inspection authority.

Prior issues of the INFORMATION LETTER have contained the testimony of N.C.A. Counsel before the House Committee considering the Food and Drug Act amendments (Supplement to issue of May 23), the text of the new law itself (June 20, page 217), and the statement by C. W. Crawford, Commissioner of Food and Drugs (August 29, page 273). For a full understanding of the present situation, canners may wish to refer to these earlier reports, together with the review of FDA factory inspection authority beginning on page 298.

## BAE Crop Report

The Bureau of Agricultural Economics late yesterday issued reports on production indications and conditions of 1953 crops of fruits and vegetables as of October 1. Following are the estimates of total U. S. production of important crops as reported by BAE:

**Fruits**

| | | |
|---|---|---|
| Apples | 97,262,000 | bu. |
| Peaches | 63,894,000 | bu. |
| Pears | 28,901,000 | bu. |
| Cranberries | 1,162,000 | bbls. |

**Vegetables for Processing**

| | | |
|---|---|---|
| Corn | 1,489,600 | tons |
| Tomatoes | 2,906,400 | tons |
| Lima beans | 95,800 | tons |
| Beets | 141,000 | tons |
| Pimientos | 34,780 | tons |
| Cabbage (contract) for kraut | 126,300 | tons |

**Field Crops**

| | | |
|---|---|---|
| Potatoes | 373,939,000 | bu. |
| Sweet potatoes | 33,709,000 | bu. |
| Dry beans | 17,730,000 | bags |
| Dry peas | 3,347,000 | bags |
| Durum wheat | 13,424,000 | bu. |

Details of the production estimates will be reported in next week's issue of the INFORMATION LETTER.

## Meeting of QM Association

General canning industry satisfaction with the program of the Quartermaster General in procuring nonperishable subsistence this year was expressed by Alfred Stokely, chairman of the N.C.A. Procurement Committee, in a report presented at the annual meeting of the Quartermaster Association in Baltimore October 2.

Mr. Stokely's report was presented to the Food and Food Containers Seminar on behalf of the Quartermaster Association's Fruit and Vegetable Committee. Text of his report is reproduced on page 300.

Fred C. Heinz, 1952 N.C.A. President, acted as chairman of the seminar and was elected a vice president of the Quartermaster Association. He is the first representative of the canning industry to become a national officer of the Quartermaster Association.

A report on behalf of the Containers Committee was given by George Muth of Continental Can Company. He described current studies on can specifications, with emphasis on exterior coatings and side seam corrosion.

A feature of the Food and Food

*(Please turn to page 299)*

# FOOD REGULATION

## Review of Factory Inspection Authority

Following is a summary analysis of the present situation with respect to FDA factory inspection procedures and authority, under the recently-enacted amendment to the Food and Drug Act:

### General

The new amendments were developed as a result of the Supreme Court decision in *United States v. Ira D. Cardiff*, in which the Court found the factory inspection sections of the Act too vague and ambiguous to support a criminal prosecution for a refusal to permit entry to FDA inspectors. Essentially, the new legislation has the effect of restoring to the Food and Drug Administration a *compulsory* right of entry for the purpose of making the *limited* inspection authorized by the Act. Certain additional obligations in connection with inspection practices and procedures have been imposed on the Food and Drug Administration in response to suggestions made and criticisms advanced by industry witnesses during the course of the hearings.

### The Right of Entry

To obtain entry into a canning plant, the FDA inspector must present "appropriate credentials" and a "written notice" to the "owner, operator, or agent in charge" of the canning establishment. The necessary presentation of credentials is for the obvious purpose of enabling the plant management to identify the individual as a duly authorized representative of the Food and Drug Administration entitled to seek entry.

The required "written notice", in serving as an official request for entry and in identifying the particular inspection, is also for the protection of the plant management. The notice currently being employed by the FDA gives the date, time of day, name of the inspector, and the address of the district office to which he is assigned, and the name and address of the plant. Canners will find it advisable to retain these notices as an official record of the inspection visit.

The required notice to the plant management may, by the terms of the statute, serve as the official notice only in respect to that particular visit of inspection. In other words, a continuing notice, such as a general notification by mail covering a packing season or some shorter period of time, will not satisfy the requirements of the statute. This does not mean that a separate notice is required for each successive entry made as part of the same visit of inspection, since temporary departures for lunch or other brief periods will not necessitate a new notice, but the statute requires a repetition of the notice procedure for each separate inspection made during the course of one or more canning seasons. All such inspection visits are to be commenced and completed with "reasonable promptness."

As indicated above, the notice must be presented to the "owner, operator, or agent in charge." This requirement is for the purpose of insuring that knowledge of the inspector's visit is communicated to a responsible agent of management. Many canners consider it advisable to arrange that a management representative accompany the inspector on his tour of the plant. Service on a mere custodial employee or other individual unrepresentative of the plant management is therefore made insufficient notice to authorize entry.

A reasonable effort to put the notice into the hands of the plant management would nevertheless appear to be sufficient under the statute, since absentee management or the failure of company employees to deliver the required notice to the proper plant authorities cannot be availed of to avoid inspections. The element of reasonableness applies here as elsewhere.

The present statute, as did the prior law, requires that the inspection be made "at reasonable times." What is a reasonable time may vary with the circumstances and the individual plant operating conditions. Inspection during the middle of the night when the plant is not operating would not, for example, be at a reasonable time. Inspection while the cannery is running, however, would appear to be authorized. Other determinations must be based on a common-sense consideration of all the facts in the light of what constitutes a reasonable exercise of the governmental authority.

### Scope of Inspection

In addition to having the authority to enter the plant proper, FDA inspectors are entitled to inspect any warehouses or establishments in which foods are processed or held for introduction into interstate commerce, or are held after such introduction, or to enter any vehicle being used to transport or hold such foods in interstate commerce. All of the requirements as to notice or reasonableness are equally applicable to warehouse and carrier inspections.

In the past, the principal areas of disagreement between the Food and Drug Administration and the regulated industries concerning factory inspection involved the *scope* of the authorized inspection, *i.e.* what the inspector was authorized to inspect or to demand access to after entry into the plant. The legislative history of the recent amendments of the factory inspection provisions of the Act has served to dispel any doubts as to the Congressional intent in this regard.

The law states that representatives of the FDA may, after obtaining entry, inspect the "factory, warehouse, establishment, or vehicle"—meaning the premises or carrier—and certain designated items on such premises—"pertinent equipment, finished and unfinished materials, containers, and labeling." No mention is made in the statute of authority to inspect records of any kind, such as formula files, quality control records, complaint files, or personnel information.

In reporting the bill to the House, the House Committee on Interstate and Foreign Commerce emphasized its intent to provide "compulsory, but limited, inspection authority." The Committee added language to the bill requiring the inspection to be conducted "within reasonable limits and in a reasonable manner", declaring that it did so for the purpose of confining the scope of inspection to the items specified in the statute—"all pertinent equipment, finished and unfinished materials, containers, and labeling therein." The floor debate in both the Senate and the House also emphasized that it was not the Congressional purpose to accord a compulsory right of access to company records.

In the opinion of N.C.A. Counsel, there is therefore no statutory requirement that canners disclose to Food and Drug inspectors the contents of their formula, quality control, complaint, or personnel files. The Food and Drug Administration has acknowledged that authority to demand such records is lacking in stating that:

". . . The legislative history indicates Congress did not intend to include prescription files, formula files, complaint files, and personnel files within the scope of required inspections. FDA interprets this to mean that inspection of these records will be on a voluntary basis.

"Accordingly, inspectors have been instructed to ask permission to see such records or files whenever there is any need or reason to examine them or to obtain information contained in them.

"The inspector may state reasons for asking to examine a particular record or file but will not otherwise press the owner, operator, or agent for permission to see it."

### Other Questions as to Scope

The N.C.A. is occasionally asked whether the authority to inspect includes the right to inspect invoices and shipment records. Access to such records is usually sought by FDA

inspectors for one of two purposes—to determine whether the canner is basically subject to the Act as a food processor producing for interstate commerce or to determine the destination and consignee of individual shipments for purposes of further investigation or enforcement activity.

As in the case of other company records, there is no express statutory authority for the inspection of shipment records in the hands of the canner. Another section of the Act, however, makes it possible for the Food and Drug Administration to obtain access to and to copy any such records in the possession of railroads or other carriers transporting the canner's products in interstate commerce. For this and other reasons, canners may not consider it advisable to withhold such information from FDA inspectors when requested.

In the absence of an express statutory sanction for the use of cameras, the N.C.A. does not consider that food processors are obligated to submit to the taking of pictures by the FDA representatives in the course of their inspections.

#### Additional Obligations of the FDA

A new subsection of the factory inspection section of the Act provides that upon completion of an inspection, and prior to leaving the premises, the employee of the FDA making the inspection shall give to the owner, operator, or agent in charge a report *in writing* setting forth any conditions or practices observed by him which, in his judgment, indicate that any food in such establishment contains filth or decomposition or has been prepared, packed, or held under insanitary conditions. It is further required by this subsection that a copy of such report shall be sent promptly to the Food and Drug Administration. No such report need be rendered if the inspection takes place in a railroad car, motor truck, or other vehicle.

The principal purpose of this written report of the inspector's conclusions is, in the words of the House Committee report, to aid factory owners who desire to avoid introducing adulterated or misbranded articles into interstate commerce. It is also stated that such reports will be of value to the factory owner if given by the inspector on the spot before he leaves the factory. Such reports will enable the factory owner to take prompt action to correct the condition, if he considers that the judgment of the inspector is correct, and will enable him to avoid a law violation by withholding the suspect article from the channels of interstate commerce.

Inspectors are currently leaving such written reports with the individual to whom they presented the notice of inspection, or if he is not available at the close of inspection, with another responsible official. At present, no official form of such report is in use, the inspector merely supplying such information under general instructions from the FDA.

The law makes it unlawful for the canner to use, in labeling, advertising, or other sales promotion, any reference to any such reports rendered by the factory inspector or to make use of any unfavorable reports to a competitor.

#### Receipts for Samples

By the terms of the new law, any FDA inspector who obtains a sample of a canner's products in the course of his inspection of a factory, warehouse, or other establishment must, upon completion of the inspection and prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the samples obtained. Many canners follow the practice of drawing like samples in comparable numbers for their own retention and analysis whenever the FDA inspector takes a sample of the canner's products. The N.C.A. strongly endorses this practice.

#### Copies of Analyses

Another new statutory provision makes it mandatory upon the Food and Drug Administration promptly to furnish to the packer a copy of the results of any analysis made of samples taken in the course of an inspection and indicating whether such foods contain filth or are otherwise unfit for food. Such reports are now being furnished to canners by district offices of the Food and Drug Administration as soon as it is operationally convenient.

Use of such reports in product promotion or advertising or to discredit the products of a competitor is likewise prohibited.

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### Meeting of QM Association

*(Concluded from page 297)*

Containers Seminar was the following program of military speakers:

Food Service—Col. J. S. Kujawski, Chief, Food Service Division, Office of the Quartermaster General;

Requirements and Distribution—Lt. Col. John Maxwell, Chief, Subsistence Branch, Distribution Division, OQMG;

Procurement—Lt. Col. J. I. DeGraw, Chief, National Operations, Market Center System, OQMG;

Armed Forces Ration Items—Dr. R. G. Tischer, Food Laboratory, Food and Container Institute, Chicago; and

Containers—Frank Rubinate, Food and Container Institute, Chicago.

# PERSONNEL

## Lewis Named Ozark Secretary

A. Dewey Lewis has been elected secretary-treasurer-traffic manager of the Ozark Canners Association, with headquarters in Fayetteville, Ark. He succeeds Joe T. Talbert, who resigned recently.

Mr. Lewis, a native of Van Buren, Ark., is a graduate of Hendrix College, Conway, Ark. He has been employed for the past 10 years as a food inspector with the Food and Drug Administration. Prior to that time he was in newspaper and railroad work and served two years with the Army Engineers as purchasing agent and expediter.

Mr. Lewis is a veteran of World War I and is active in civic, veteran, business, and fraternal organizations.

# PUBLICITY

## Woman's Day Magazine

In the October issue of *Woman's Day*, the A & P Stores magazine, one of the food features is entitled "Start with 1 Can of Corned-Beef Hash for Dinner for 2."

About the seven recipes Olivia Risberg, author of the article, says, "These recipes for main dishes cost 34¢ to 67¢ for two generous servings." Along with the corned beef hash, the following canned foods were used: cream of mushroom soup, pimiento, chili sauce, peaches, and tomatoes.

# PUBLICATION

## USDA Yearbook

The U. S. Department of Agriculture has announced publication of the 1953 Yearbook of Agriculture entitled *Plant Diseases*. The new yearbook describes the causes and control of hundreds of diseases of crop plants. Included is a 32-page section of color photographs designed to help readers identify many of the more important diseases.

The yearbook is produced by USDA as a Congressional document. Its main distribution is by members of the Senate and House of Representatives. Copies also are for sale at $2.50 by the Superintendent of Documents, Washington 25, D. C.

# PROCUREMENT

## Food Group Voices Satisfaction with Procurement Program

Following is the text of a report by Alfred Stokely, Chairman of the N.C.A. Procurement Committee, expressing satisfaction with the Quartermaster Corps' current program for procurement of canned foods:

In reporting again on the military procurement of canned foods, first of all I wish to compliment the job that has been done the last two years in estimating requirements. Even though the Quartermaster makes a point of the fact that the annual requirements are only an estimate of annual needs, canned food packers take as gospel the announced annual requirements. When it is considered that these are doubtful days in which we live, it is a wonderful thing as a supplier to have better than 5 percent of our annual sales become a preseason fact. So I am happy to compliment the crystal ball gazers in the Army, Air Force, Marines and Navy on their ability to forecast military requirements.

I also want to compliment my own industry. Over the past years there have been efforts on the part of various commodity groups to obtain exceptions from the Quartermaster's requirements. Sometimes these efforts have been to get a cutback in the requirement, other times to obtain an increased requirement. In either case the request has been dictated by the size of the pack and the canners' natural desire to maintain a close relationship between supply and demand in the civilian market. Evidently, however, the industry is awakening to the fact that the armed forces represent an annual volume that merits consideration along with any other top-flight customer—and one that does not entail any selling expense. This year, at any rate, with one minor exception, no commodity group in the industry has asked the Quartermaster to bail the industry out of an oversupply and buy more than the announced requirement, nor help them protect the civilian market and buy less.

Again this year something new was added to the military canned food procurement program. Possibly it foreshadows a pattern for procuring all canned food items in the years ahead. Following the Korean outbreak, the Quartermaster and the industry agreed on a procurement program calling for the use of mandatory set-aside orders on the major canned food items, an exemption from the Walsh-Healey Act, and the direct field buyer negotiation of price. Non-set-aside canned items were procured by advertised bid or by negotiation; but no allocation program was attempted. Last year letter contracts, or more appropriately futures contracts, were introduced into the program for the set-aside items. This year, the Quartermaster introduced a voluntary allocation program in the procurement of a number of the non-set-aside items. The voluntary allocation program is based on publicly available industry pack statistics. The major producing areas of the country are allocated their representative shares of the total requirement. The area requirements in turn are allocated among the packers according to their historical production. Canners who wish to be suppliers are offered letter contracts for their share. Those who do not wish to participate are under no obligation. The final contract price is negotiated at the time the pack is completed on the basis of the current market for the commodity, modified to the extent that the canner has undertaken any special obligations, such as export packing.

The voluntary allocation program, combined with futures contracts and a Walsh-Healey exemption, appears to have advantages over the mandatory set-aside arrangements. It is perhaps too early to express industry opinion, but it is my guess that the canning industry will overwhelmingly endorse the use of a voluntary allocation program for all canned foods next year. The voluntary allocation program provides an opportunity for the smaller producers to cooperate and obtain a representative share of the Quartermaster business. Under mandatory set-aside orders, it is administratively burdensome for the Quartermaster to do business with the very small producer since his individual set-aside does not warrant the handling expense. The mandatory program allows no flexibility. In a voluntary program, however, a small canner should be able to negotiate for a portion of the requirement. The voluntary program likewise places no government obligation on a canner to hold merchandise that will never be purchased because the supplier has too high a cost factor. High cost or specialized canners, under a voluntary allocation program, are not compelled to bear a financial loss because of a moral as well as legal obligation to sell to the government. Finally, the voluntary allocation type of program allows the Quartermaster to develop broad and permanently established sources of supply sufficient to meet emergencies. It would be another step toward bringing the government's procurement program in line with the practices of civilian buyers.

The canning industry, through the Quartermaster Association's Fruit and Vegetable Committee, the National Canners Association's Procurement Committee, and the new Advisory Committee to the Quartermaster General, will continue to study military procurement methods and procedures and to endorse or oppose programs, as the case may be, which it believes are or are not in the public interest. These committees are competent. They fully represent all segments of the highly competitive canning industry—the small, medium, and large canners—the cooperatives, independents, and the brand names.

Presented by Mr. Stokely in his capacity as Chairman of the Quartermaster Association's Fruit and Vegetable Committee, at a seminar on Food and Food Containers, held during the annual meeting of the Quartermaster Association in Baltimore October 2.

## Canned Beef for USDA

The Production and Marketing Administration, USDA, has announced the purchase of 6,320,400 pounds of canned beef at an average price of 39.72 cents per pound, f.o.b. plant, during the week of September 28. This raises total USDA purchases of canned beef to 86,008,830 pounds.

The USDA purchased 9,318,000 pounds of canned beef for delivery by November 14 for export by the Foreign Operations Administration. This raises total USDA purchases of canned beef for FOA program to 11,920,000 pounds.

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